

SENATE BILL REPORT

SB 5666

As of February 18, 2013

Title: An act relating to clarifying the law regarding disclosing health care quality improvement, quality assurance, peer review, and credentialing information.

Brief Description: Concerning disclosure of information by health care quality improvement programs, quality assurance programs, and peer review committees.

Sponsors: Senator Dammeier.

Brief History:

Committee Activity: Health Care: 2/18/13.

SENATE COMMITTEE ON HEALTH CARE

Staff: Kathleen Buchli (786-7488)

Background: Hospitals must maintain a coordinated Quality Improvement Program (Program) that includes the establishment of a Quality Improvement Committee to oversee the services rendered in the hospital; a medical staff privileges sanction procedure through which credentials, physical and mental capacity, and competence in delivering health care services are periodically reviewed; the periodic review of the credentials, physical and mental capacity, and competence in delivering health care services of all other persons employed by the hospital; a procedure for the prompt resolution of grievances by patients related to accidents, injuries, and other events related to medical malpractice claims; and the maintenance and collection of information concerning the hospital's experience with negative health care outcomes. Information created specifically for a Program is not subject to disclosure or discovery or introduction into evidence in a civil action.

However, in a civil action, the following may be disclosed: the identity of persons involved in the medical care that is the basis of the civil action whose involvement is independent of the Program; testimony of any person on the facts forming the basis for the civil action of which the person has personal knowledge, independent of the Program; and the fact that staff privileges were terminated or restricted, including the specific restrictions imposed and the reasons for the restrictions. Further, the Supreme Court in *Lowy v. PeaceHealth*, 280 P.3d 1078 – 2012 stated that a hospital is not precluded from internally reviewing its own Quality Improvement Committee records to locate records relating to a discovery request.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Before granting or renewing clinical privileges, a hospital or ambulatory surgical facility must request physicians provide information on any hospital at which the physician had any association, and if discontinued, the reason for its discontinuation. Information on any medical malpractice action must also be provided. Hospitals or ambulatory surgical facilities supplying this information are not liable in a civil action for the release of this information.

Other health care facilities have quality assurance committees similar to those required for hospitals. These include assisted living facilities, ambulatory surgical facilities, and nursing homes.

Summary of Bill: Information and documents, including complaints and incident reports, created, collected, or maintained specifically for, by, or at the direction of a Program, including for purposes of granting or reviewing a health care provider's credentials or privileges, are exempt from disclosure and are privileged and immune from discovery or direct or indirect use in a civil action. No person who was in attendance at a meeting of a Program or who participated in the creation, collection, or maintenance of information or documents for such Program may be permitted or required to testify in any civil action as to the content of such proceedings or the documents and information prepared for the Program. The exceptions to this prohibition on disclosure remain, except if staff privileges were terminated or restricted, the reasons for the restrictions are not subject to disclosure.

The information and documents created for a Program may be shared with other Programs in order to improve the quality of health care services rendered to patients and to identify and prevent medical malpractice. This includes sharing information for the purposes of granting or reviewing health care providers' credentials or privileges. This information is not otherwise subject to disclosure.

The requirement that a hospital or ambulatory surgical facility request physicians to provide it information on any hospital at which the physician had any association before granting or renewing clinical privileges remains but is limited to the last five years of the practitioner's practice.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: This will improve quality of care in our health care system and improve clinical outcomes. Health care facilities must be able to critically self-examine their actions and their health care providers to be able to identify areas where they can improve. Disclosure of this information would chill efforts at candid self-examination. Two supreme court decisions have called into question the confidentiality of peer review commissions. This is not a black hole and is not a major change; it is an attempt to address court decisions that have created new interpretations of current statute and caused them to be less efficient. Information that is privileged and confidential at one hospital needs

to be kept privileged at another hospital. The privilege of the peer review information should not be lost because it is being used in the initial credentialing process. Reporting the reasons for termination or restriction on privileges will have a chilling effect on the willingness for physicians to participate in the peer review process. The key to improved health care is honest discussion and these discussion must remain confidential. Staff must feel safe to participate in peer review. Failure to protect the quality improvement activities will have a chilling effect on candid discussion.

CON: Current law provides protections against disclosure by quality improvement committees. This would provide a black hole of secrecy where documents may be deposited and hidden from discovery efforts. This would impair disciplinary authorities by preventing access to documents related to providers. No other state in the union would have an approach that is as broad. If this passes, every defense attorney will push information into these privileged categories. Other professions do not have these types of privileges. Documents collected and maintained by a quality improvement committee are not subject to review or disclosure under current law. This proposal would change that to prevent disclosure of documents collected and maintained specifically for a quality improvement committee. It allows information and documents to be laundered and placed in these committees to prevent their disclosure. Hiding some of these documents could infringe on patient care.

Persons Testifying: PRO: Senator Dammeier, prime sponsor; Katie Kolan, WA State Medical Assn.; Barbara Schickich, WA State Hospital Assn.; Sarah Patterson, Virginia Mason; Mark Del Beccaro, Seattle Children's Hospital; Mel Sorensen, WA Defense Trial Lawyers.

CON: Larry Shannon, WA State Assn. of Justice; John Budlong, The Budlong Law Firm; Reed Schifferman, Law Offices of Reed Schifferman.